

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 929

Introduced by Landis, 46

Read first time January 5, 2000

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to commercial transactions; to adopt the
- 2 Uniform Electronic Transactions Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 16 of this act shall be known
2 and may be cited as the Uniform Electronic Transactions Act.

3 Sec. 2. For purposes of the Uniform Electronic
4 Transactions Act:

5 (1) Agreement means the bargain of the parties in fact,
6 as found in their language or inferred from other circumstances and
7 from rules, regulations, and procedures given the effect of
8 agreements under laws otherwise applicable to a particular
9 transaction.

10 (2) Automated transaction means a transaction conducted
11 or performed, in whole or in part, by electronic means or
12 electronic records, in which the acts or records of one or both
13 parties are not reviewed by an individual in the ordinary course in
14 forming a contract, performing under an existing contract, or
15 fulfilling an obligation required by the transaction.

16 (3) Computer program means a set of statements or
17 instructions to be used directly or indirectly in an information
18 processing system in order to bring about a certain result.

19 (4) Contract means the total legal obligation resulting
20 from the parties' agreement as affected by the act and other
21 applicable law.

22 (5) Electronic means relating to technology having
23 electrical, digital, magnetic, wireless, optical, electromagnetic,
24 or similar capabilities.

25 (6) Electronic agent means a computer program or an
26 electronic or other automated means used independently to initiate
27 an action or respond to electronic records or performances in whole
28 or in part, without review or action by an individual.

1 (7) Electronic record means a record created, generated,
2 sent, communicated, received, or stored by electronic means.

3 (8) Electronic signature means an electronic sound,
4 symbol, or process attached to or logically associated with a
5 record and executed or adopted by a person with the intent to sign
6 the record.

7 (9) Governmental agency means an executive, legislative,
8 or judicial agency, department, board, commission, authority,
9 institution, or instrumentality of the federal government or of a
10 state or of a county, municipality, or other political subdivision
11 of a state.

12 (10) Information means data, text, images, sounds, codes,
13 computer programs, software, data bases, or the like.

14 (11) Information processing system means an electronic
15 system for creating, generating, sending, receiving, storing,
16 displaying, or processing information.

17 (12) Person means an individual, corporation, business
18 trust, estate, trust, partnership, limited liability company,
19 association, joint venture, governmental agency, public
20 corporation, or any other legal or commercial entity.

21 (13) Record means information that is inscribed on a
22 tangible medium or that is stored in an electronic or other medium
23 and is retrievable in perceivable form.

24 (14) Security procedure means a procedure employed for
25 the purpose of verifying that an electronic signature, record, or
26 performance is that of a specific person or for detecting changes
27 or errors in the information in an electronic record. The term
28 includes a procedure that requires the use of algorithms or other

1 codes, identifying words or numbers, encryption, or callback or
2 other acknowledgment procedures.

3 (15) State means a state of the United States, the
4 District of Columbia, Puerto Rico, the United States Virgin
5 Islands, or any territory or insular possession subject to the
6 jurisdiction of the United States. The term includes an Indian
7 tribe or band, or Alaskan native village, which is recognized by
8 federal law or formally acknowledged by a state.

9 (16) Transaction means an action or set of actions
10 occurring between two or more persons relating to the conduct of
11 business, commercial, or governmental affairs.

12 Sec. 3. (a) Except as otherwise provided in subsection
13 (b) of this section, the Uniform Electronic Transactions Act
14 applies to electronic records and electronic signatures relating to
15 a transaction.

16 (b) The act does not apply to a transaction to the extent
17 it is governed by:

18 (1) a law governing the creation and execution of wills,
19 codicils, or testamentary trusts; or

20 (2) the Uniform Commercial Code other than sections 1-107
21 and 1-206, article 2, and article 2A.

22 (c) The act applies to an electronic record or electronic
23 signature otherwise excluded from the application of the act under
24 subsection (b) of this section to the extent it is governed by a
25 law other than those specified in subsection (b) of this section.

26 (d) A transaction subject to the act is also subject to
27 other applicable substantive law.

28 Sec. 4. The Uniform Electronic Transactions Act applies

1 to any electronic record or electronic signature created,
2 generated, sent, communicated, received, or stored on or after the
3 effective date of this act.

4 Sec. 5. (a) The Uniform Electronic Transactions Act does
5 not require a record or signature to be created, generated, sent,
6 communicated, received, stored, or otherwise processed or used by
7 electronic means or in electronic form.

8 (b) The act applies only to transactions between parties
9 each of which has agreed to conduct transactions by electronic
10 means. Whether the parties agree to conduct a transaction by
11 electronic means is determined from the context and surrounding
12 circumstances, including the parties' conduct.

13 (c) A party that agrees to conduct a transaction by
14 electronic means may refuse to conduct other transactions by
15 electronic means. The right granted by this subsection may not be
16 waived by agreement.

17 (d) Except as otherwise provided in the act, the effect
18 of any of its provisions may be varied by agreement. The presence
19 in certain provisions of the act of the words "unless otherwise
20 agreed", or words of similar import, does not imply that the effect
21 of other provisions may not be varied by agreement.

22 (e) Whether an electronic record or electronic signature
23 has legal consequences is determined by the act and other
24 applicable law.

25 Sec. 6. The Uniform Electronic Transactions Act must be
26 construed and applied:

27 (1) to facilitate electronic transactions consistent with
28 other applicable law;

1 (2) to be consistent with reasonable practices concerning
2 electronic transactions and with the continued expansion of those
3 practices; and

4 (3) to effectuate its general purpose to make uniform the
5 law with respect to the subject of the act among states enacting
6 it.

7 Sec. 7. (a) A record or signature may not be denied
8 legal effect or enforceability solely because it is in electronic
9 form.

10 (b) A contract may not be denied legal effect or
11 enforceability solely because an electronic record was used in its
12 formation.

13 (c) If a law requires a record to be in writing, an
14 electronic record satisfies the law.

15 (d) If a law requires a signature, an electronic
16 signature satisfies the law.

17 Sec. 8. (a) If parties have agreed to conduct a
18 transaction by electronic means and a law requires a person to
19 provide, send, or deliver information in writing to another person,
20 the requirement is satisfied if the information is provided, sent,
21 or delivered, as the case may be, in an electronic record capable
22 of retention by the recipient at the time of receipt. An electronic
23 record is not capable of retention by the recipient if the sender
24 or its information processing system inhibits the ability of the
25 recipient to print or store the electronic record.

26 (b) If a law other than the Uniform Electronic
27 Transactions Act requires a record (i) to be posted or displayed in
28 a certain manner, (ii) to be sent, communicated, or transmitted by

1 a specified method, or (iii) to contain information that is
2 formatted in a certain manner, the following rules apply:

3 (1) The record must be posted or displayed in the manner
4 specified in the other law.

5 (2) Except as otherwise provided in subdivision (d)(2) of
6 this section, the record must be sent, communicated, or transmitted
7 by the method specified in the other law.

8 (3) The record must contain the information formatted in
9 the manner specified in the other law.

10 (c) If a sender inhibits the ability of a recipient to
11 store or print an electronic record, the electronic record is not
12 enforceable against the recipient.

13 (d) The requirements of this section may not be varied by
14 agreement, but:

15 (1) to the extent a law other than the act requires
16 information to be provided, sent, or delivered in writing but
17 permits that requirement to be varied by agreement, the requirement
18 under subsection (a) of this section that the information be in the
19 form of an electronic record capable of retention may also be
20 varied by agreement; and

21 (2) a requirement under a law other than the act to send,
22 communicate, or transmit a record by first-class mail, postage
23 prepaid or regular United States mail, may be varied by agreement
24 to the extent permitted by the other law.

25 Sec. 9. (a) An electronic record or electronic signature
26 is attributable to a person if it was the act of the person. The
27 act of the person may be shown in any manner, including a showing
28 of the efficacy of any security procedure applied to determine the

1 person to which the electronic record or electronic signature was
2 attributable.

3 (b) The effect of an electronic record or electronic
4 signature attributed to a person under subsection (a) of this
5 section is determined from the context and surrounding
6 circumstances at the time of its creation, execution, or adoption,
7 including the parties' agreement, if any, and otherwise as provided
8 by law.

9 Sec. 10. If a change or error in an electronic record
10 occurs in a transmission between parties to a transaction, the
11 following rules apply:

12 (1) If the parties have agreed to use a security
13 procedure to detect changes or errors and one party has conformed
14 to the procedure, but the other party has not, and the
15 nonconforming party would have detected the change or error had
16 that party also conformed, the conforming party may avoid the
17 effect of the changed or erroneous electronic record.

18 (2) In an automated transaction involving an individual,
19 the individual may avoid the effect of an electronic record that
20 resulted from an error made by the individual in dealing with the
21 electronic agent of another person if the electronic agent did not
22 provide an opportunity for the prevention or correction of the
23 error and, at the time the individual learns of the error, the
24 individual:

25 (A) promptly notifies the other person of the error and
26 that the individual did not intend to be bound by the electronic
27 record received by the other person;

28 (B) takes reasonable steps, including steps that conform

1 to the other person's reasonable instructions, to return to the
2 other person or, if instructed by the other person, to destroy the
3 consideration received, if any, as a result of the erroneous
4 electronic record; and

5 (C) has not used or received any benefit or value from
6 the consideration, if any, received from the other person.

7 (3) If neither subdivision (1) or subdivision (2) of this
8 section applies, the change or error has the effect provided by
9 other law, including the law of mistake, and the parties' contract,
10 if any.

11 (4) Subdivisions (2) and (3) of this section may not be
12 varied by agreement.

13 Sec. 11. If a law requires a signature or record to be
14 notarized, acknowledged, verified, or made under oath, the
15 requirement is satisfied if the electronic signature of the person
16 authorized to perform those acts, together with all other
17 information required to be included by other applicable law, is
18 attached to or logically associated with the signature or record.

19 Sec. 12. (a) If a law requires that a record be
20 retained, the requirement is satisfied by retaining an electronic
21 record of the information in the record which:

22 (1) accurately reflects the information set forth in the
23 record after it was first generated in its final form as an
24 electronic record or otherwise; and

25 (2) remains accessible for later reference.

26 (b) A requirement to retain a record in accordance with
27 subsection (a) of this section does not apply to any information
28 the sole purpose of which is to enable the record to be sent,

1 communicated, or received.

2 (c) A person may satisfy subsection (a) of this section
3 by using the services of another person if the requirements of that
4 subsection are satisfied.

5 (d) If a law requires a record to be presented or
6 retained in its original form, or provides consequences if the
7 record is not presented or retained in its original form, that law
8 is satisfied by an electronic record retained in accordance with
9 subsection (a) of this section.

10 (e) If a law requires retention of a check, that
11 requirement is satisfied by retention of an electronic record of
12 the information on the front and back of the check in accordance
13 with subsection (a) of this section.

14 (f) A record retained as an electronic record in
15 accordance with subsection (a) of this section satisfies a law
16 requiring a person to retain a record for evidentiary, audit, or
17 like purposes, unless a law enacted after the effective date of
18 this act specifically prohibits the use of an electronic record for
19 the specified purpose.

20 (g) This section does not preclude a governmental agency
21 of this state from specifying additional requirements for the
22 retention of a record subject to the agency's jurisdiction.

23 Sec. 13. In a proceeding, evidence of a record or
24 signature may not be excluded solely because it is in electronic
25 form.

26 Sec. 14. In an automated transaction, the following
27 rules apply:

28 (1) A contract may be formed by the interaction of

1 electronic agents of the parties, even if no individual was aware
2 of or reviewed the electronic agents' actions or the resulting
3 terms and agreements.

4 (2) A contract may be formed by the interaction of an
5 electronic agent and an individual, acting on the individual's own
6 behalf or for another person, including by an interaction in which
7 the individual performs actions that the individual is free to
8 refuse to perform and which the individual knows or has reason to
9 know will cause the electronic agent to complete the transaction or
10 performance.

11 (3) The terms of the contract are determined by the
12 substantive law applicable to it.

13 Sec. 15. (a) Unless otherwise agreed between the sender
14 and the recipient, an electronic record is sent when it:

15 (1) is addressed properly or otherwise directed properly
16 to an information processing system that the recipient has
17 designated or uses for the purpose of receiving electronic records
18 or information of the type sent and from which the recipient is
19 able to retrieve the electronic record;

20 (2) is in a form capable of being processed by that
21 system; and

22 (3) enters an information processing system outside the
23 control of the sender or of a person that sent the electronic
24 record on behalf of the sender or enters a region of the
25 information processing system designated or used by the recipient
26 which is under the control of the recipient.

27 (b) Unless otherwise agreed between a sender and the
28 recipient, an electronic record is received when:

1 (1) it enters an information processing system that the
2 recipient has designated or uses for the purpose of receiving
3 electronic records or information of the type sent and from which
4 the recipient is able to retrieve the electronic record; and

5 (2) it is in a form capable of being processed by that
6 system.

7 (c) Subsection (b) of this section applies even if the
8 place the information processing system is located is different
9 from the place the electronic record is deemed to be received under
10 subsection (d) of this section.

11 (d) Unless otherwise expressly provided in the electronic
12 record or agreed between the sender and the recipient, an
13 electronic record is deemed to be sent from the sender's place of
14 business and to be received at the recipient's place of business.
15 For purposes of this subsection, the following rules apply:

16 (1) If the sender or recipient has more than one place of
17 business, the place of business of that person is the place having
18 the closest relationship to the underlying transaction.

19 (2) If the sender or the recipient does not have a place
20 of business, the place of business is the sender's or recipient's
21 residence, as the case may be.

22 (e) An electronic record is received under subsection (b)
23 of this section even if no individual is aware of its receipt.

24 (f) Receipt of an electronic acknowledgment from an
25 information processing system described in subsection (b) of this
26 section establishes that a record was received but, by itself, does
27 not establish that the content sent corresponds to the content
28 received.

1 (g) If a person is aware that an electronic record
2 purportedly sent under subsection (a) of this section, or
3 purportedly received under subsection (b) of this section, was not
4 actually sent or received, the legal effect of the sending or
5 receipt is determined by other applicable law. Except to the extent
6 permitted by the other law, the requirements of this subsection may
7 not be varied by agreement.

8 Sec. 16. (a) In this section, transferable record means
9 an electronic record that:

10 (1) would be a note under article 3 of the Uniform
11 Commercial Code or a document under article 7 of the Uniform
12 Commercial Code if the electronic record were in writing; and

13 (2) the issuer of the electronic record expressly has
14 agreed is a transferable record.

15 (b) A person has control of a transferable record if a
16 system employed for evidencing the transfer of interests in the
17 transferable record reliably establishes that person as the person
18 to which the transferable record was issued or transferred.

19 (c) A system satisfies subsection (b) of this section,
20 and a person is deemed to have control of a transferable record, if
21 the transferable record is created, stored, and assigned in such a
22 manner that:

23 (1) a single authoritative copy of the transferable
24 record exists which is unique, identifiable, and, except as
25 otherwise provided in subdivisions (4), (5), and (6) of this
26 subsection, unalterable;

27 (2) the authoritative copy identifies the person
28 asserting control as:

1 (A) the person to which the transferable record was
2 issued; or

3 (B) if the authoritative copy indicates that the
4 transferable record has been transferred, the person to which the
5 transferable record was most recently transferred;

6 (3) the authoritative copy is communicated to and
7 maintained by the person asserting control or its designated
8 custodian;

9 (4) copies or revisions that add or change an identified
10 assignee of the authoritative copy can be made only with the
11 consent of the person asserting control;

12 (5) each copy of the authoritative copy and any copy of a
13 copy is readily identifiable as a copy that is not the
14 authoritative copy; and

15 (6) any revision of the authoritative copy is readily
16 identifiable as authorized or unauthorized.

17 (d)(i) Prior to July 1, 2001, except as otherwise agreed,
18 a person having control of a transferable record is the holder, as
19 defined in subdivision (20) of section 1-201, Uniform Commercial
20 Code, of the transferable record and has the same rights and
21 defenses as a holder of an equivalent record or writing under the
22 Uniform Commercial Code, including, if the applicable statutory
23 requirements under subsection (a) of section 3-302, 7-501, or
24 9-308, Uniform Commercial Code, are satisfied, the rights and
25 defenses of a holder in due course, a holder to which a negotiable
26 document of title has been duly negotiated, or a purchaser,
27 respectively. Delivery, possession, and indorsement are not
28 required to obtain or exercise any of the rights under this

1 subdivision.

2 (ii) On or after July 1, 2001, except as otherwise
3 agreed, a person having control of a transferable record is the
4 holder, as defined in subdivision (20) of section 1-201, Uniform
5 Commercial Code, of the transferable record and has the same rights
6 and defenses as a holder of an equivalent record or writing under
7 the Uniform Commercial Code, including, if the applicable statutory
8 requirements under subsection (a) of section 3-302, 7-501, or
9 9-330, Uniform Commercial Code, are satisfied, the rights and
10 defenses of a holder in due course, a holder to which a negotiable
11 document of title has been duly negotiated, or a purchaser,
12 respectively. Delivery, possession, and indorsement are not
13 required to obtain or exercise any of the rights under this
14 subdivision.

15 (e) Except as otherwise agreed, an obligor under a
16 transferable record has the same rights and defenses as an
17 equivalent obligor under equivalent records or writings under the
18 Uniform Commercial Code.

19 (f) If requested by a person against which enforcement is
20 sought, the person seeking to enforce the transferable record shall
21 provide reasonable proof that the person is in control of the
22 transferable record. Proof may include access to the authoritative
23 copy of the transferable record and related business records
24 sufficient to review the terms of the transferable record and to
25 establish the identity of the person having control of the
26 transferable record.

27 Sec. 17. If any section in this act or any part of any
28 section is declared invalid or unconstitutional, the declaration

LB 929

LB 929

- 1 shall not affect the validity or constitutionality of the remaining
- 2 portions.